# No. 15,770

IN THE

# United States Court of Appeals

## For the Ninth Circuit

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LEROY CHARGOIS,
*Appellant,*

vs.

UNITED STATES OF AMERICA,
*Appellee.*

**On Appeal from the District Court for the District of Alaska, Third Division.**

## BRIEF FOR APPELLEE.

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### JURISDICTIONAL STATEMENT.

The appellant was tried to a jury in the District Court, Third Judicial Division, District of Alaska, for a violation of Section 2421, Title 18, U.S.C., and Section 2422, Title 18, U.S.C. The jury found the defendant guilty on both counts. The defendant was sentenced on March 4, 1957, by the trial Court to a term of eighteen (18) months imprisonment on each count, serving of which was to run consecutively. Execution of said sentence has been stayed pending outcome of the present appeal. Jurisdiction is conferred on this Court by Sections 1291 and 1294, Title 28, U.S.C.

## STATEMENT OF FACTS.

### A. Pleadings.

The Grand Jury for the Third Judicial Division, District of Alaska, brought an indictment against Leroy Chargois, appellant, charging him in Count I with unlawful transportation, by causing a woman to be transported between San Francisco, California, and Anchorage, Alaska, for the purposes of prostitution, and in Count II with unlawful transportation, by causing a woman to be transported between Fairbanks and Anchorage, Alaska, for the purposes of prostitution. The Grand Jury charged a violation of Section 2422, Title 18, U.S.C. in Count I and Section 2421, Title 18, U.S.C. in Count II.

### B. The Facts.

The undisputed facts pertaining to Count I are as follows: That during the month of April, 1955, Mabel Henderson, the victim, also known as Mabel Jamerson and several other names, left San Francisco, California, aboard a commercial airplane and arrived at Anchorage, then Territory of Alaska; that Mabel Henderson was a prostitute at this time and engaged in acts of prostitution after her arrival in Anchorage; that Leroy Chargois, appellant, knew Mabel Henderson prior to her departure from San Francisco and had been in Alaska in her company for about a year prior to April, 1955; that at the time the defendant-appellant and the victim met for the first time, the victim was a prostitute; that prior to her departure there had been talk between the defendant-appellant and the victim about their getting married and that

she was coming to Anchorage for the purpose of making money. As to the rest of the pertinent facts, they are in dispute. The government's evidence indicates that the victim and the defendant-appellant had intended, while in San Francisco, that the victim should work as a prostitute after arriving in Anchorage in order to earn money; that the defendant-appellant borrowed money from a third party for her airplane ticket; that the victim did, in fact, work as a prostitute in Anchorage upon her arrival and shared the earnings gained from her trade with the defendant-appellant.

The undisputed facts pertaining to Count II are as follows: That Mabel Henderson, also known as Mabel Jamerson and other names, went to Fairbanks, Alaska, in June, 1954, and there worked as a prostitute. She went to Anchorage in September and returned to Fairbanks accompanied by the defendant-appellant. She resumed her work as a prostitute. The defendant-appellant knew her trade and that she was working at it. About October 5, 1954, the defendant-appellant and Mabel Henderson returned to Anchorage, Alaska, via Alaska Airlines. The defendant-appellant purchased her ticket. One of the matters Mabel Henderson attended to upon her return to Anchorage was to go to a physician for about two weeks' medical care. In Anchorage, after the medical treatment, Mabel Henderson resumed her work as a prostitute. As to the rest of the pertinent facts, they are in dispute. The government's evidence indicates that the defendant-appellant provided Mabel Henderson

with transportation from Fairbanks to Anchorage, Alaska, so she could continue her work as a prostitute in Anchorage. It is also disputed that the defendant-appellant and Mabel Henderson lived together as man and wife in Fairbanks immediately prior to the Anchorage trip. It is disputed too, that the defendant-appellant shared Mabel Henderson's earnings which she made working as a prostitute after her return to Anchorage.

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## QUESTIONS INVOLVED.

The points of error relied on by the appellant may be grouped under the following headings:

1. Error in the indictment.

2. Insufficiency of the government's evidence at the close of the government's case on both counts; lack of sufficient evidence to support the verdict of the jury.

3. Error in the trial Court's instructions as given and error in refusing to give certain instructions requested by the appellant.

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## ARGUMENT.

The government will argue the assignments of error as grouped under the above paragraph. The defendant, in his brief, makes numerous references back to errors previously assigned, but the government will concern itself with one error at a time and will thus differ somewhat in following the assignments of error listed by the defendant.

## I.

### ERROR IN THE INDICTMENT.

The fact that Count I of the indictment erroneously characterizes a voyage from San Francisco, California, to Anchorage, Alaska, does not render the indictment void. The words "foreign commerce" constitute a legal conclusion at best, and not facts. The facts alleging the voyage are found in the words,

> "from San Francisco, California, to Anchorage, Territory of Alaska. . . ."

The indictment specified pointedly the course of the voyage. There is no variance between indictment and proof. The defendant could not have been misled at the trial nor can he be tried again for the same crime because the indictment is specific as to the place the offense occurred. Finally, the words "foreign commerce" can be disregarded as surplusage since enough is left to make a valid and substantial charge of the crime intended to be charged. In *Craig v. United States,* 81 F. 2d 816 (9th Cir. 1936), the Appellate Court was faced with a challenge to the indictment. They stated as follows on page 822:

> "Even if an essential averment in an indictment is faulty in form; yet if it may by fair construction be found within the text, it is sufficient."

In the present indictment, there is no difficulty in determining the points of origin and destination. Further, the defendant does not deny the voyage. He admits the victim traveled from San Francisco, California, to Anchorage, Alaska.

At the close of the government's case, there was enough evidence, if believed, to convict the defendant on both counts; the Court correctly overruled the motion to dismiss.

When the defendant took the stand he admitted the two voyages in question; he admitted that he knew she worked as a prostitute, but that he attempted to discourage such activities. The evidence offered by the defendant was not so overwhelming and so convincing that the jury was bound to believe it. They had a right to disregard all the evidence offered in the defendant's behalf so long as they did not do so arbitrarily. They chose to believe Mabel Henderson and to disbelieve Leroy Chargois. That is the province of the jury. As the Court stated in *Bryson v. United States,* 238 F. 2d 657 (9th Cir. 1956), at p. 662, the weight of the evidence including all factors of credibility which do not render testimony incredible as a matter of law, is beyond the scope of appellate review of jury verdicts.

The defendant's brief argues that in addition to lack of evidence, the evidence on the part of the government shows intentions and purposes on the part of the defendant that are consistent with innocence, not guilt. Yet, the law is clear that if any of the dominant purposes present in transporting a woman interstate is for the purpose of prostitution, it is sufficient to bring the matter within the purview of the White Slave Traffic Act. See *Daigle v. United States,* 181 F. 2d 311 (1st Cir. 1950); *Long v. United States,* 160 F. 2d 706 (10th Cir. 1947); *O'Neal v. United States,* 240 F. 2d 700 (10th Cir. 1957).

The government agrees that human beings act from various motives and for various purposes in their movements. Certainly, the defendant may well have had the intent to do innocent acts, as well as evil, when he induced the victim to travel interstate. People seldom make important decisions with but a single purpose in mind. Yet, there is considerable evidence that a dominant purpose of the defendant in transporting Mabel Henderson was to get her to a market good for prostitution. According to the victim, the defendant put up the money for her trip.

In *Lattanzio v. United States,* 243 F. 2d 801 (9th Cir. 1957), the defendant put up the money for the victim's interstate trip. The Court stated that when one advances money to a woman to travel interstate for the purpose of prostitution, that person has caused the woman to be transported in violation of Section 2421, Title 18, U.S.C. Accord: *Ege v. United States,* 242 F. 2d 879 (9th Cir. 1957).

In another White Slave Traffic Act case, *O'Neal v. United States,* supra, one of the victims testified that she intended to work as a waitress at the conclusion of her interstate trip. The Court stated, p. 702:

> "It is not necessary to sustain a conviction under the Act that the sole purpose of the transportation be for immoral purposes."

The Court reiterated the law the Court had stated in *Dunn v. United States,* 190 F. 2d 496, 497 (10th Cir. 1951), to the effect that it is sufficient to sustain a verdict that one of the compelling purposes of the trip be to have the victim engage in prostitution. The

Court went even further in the *O'Neal* case than the *Dunn* case, by adding, p. 702:

> "The jury could infer from the evidence that one of the purposes, if not the compelling purpose, of the transportation was prostitution."

In the instant case, the proof offered by the government shows that prostitution in Alaska was one of the compelling purposes of both trips.

In *Daigle v. United States,* supra, the Court held that even though only one of the purposes of the trip was prostitution, it is enough upon which to base a conviction for violation of the White Slave Traffic Act.

In *Long v. United States,* supra, the Court sets out again the requirement that only one of the purposes of an interstate trip need be for prostitution in order to sustain a conviction. The Court correctly stated that the aim of prostitution must, of course, be one of the dominant, not incidental, purposes.

The defendant maintains that mere adultery or fornication between the defendant and the victim does not come within the purview of the White Slave Traffic Act. Though such may be the case, yet evidence of illicit sexual conduct between defendant and victim just before the trip and just after, may be introduced to show that one of the purposes of the voyage was illicit intercourse. See *Daigle v. United States,* supra, and *Long v. United States,* supra. *Kelly v. United States,* 207 F. 212 (9th Cir. 1924), holds that evidence of acts and conduct of the parties after their arrival

at Anchorage from Seattle, Washington, is competent to show the purpose of the voyage. In *Lindsey v. United States,* 227 F. 2d 113 (5th Cir. 1955), it was held that evidence of the fact that the victim offered herself for prostitution at the end of the journey is admissible to show a reason for the interstate trip. See p. 117 of the opinion.

To sum up, evidence was offered by the government to show that the victim was a prostitute; that she engaged in prostitution in Anchorage and Fairbanks and again in Anchorage; that the defendant and the victim had illicit sexual intercourse immediately prior to both the trips and after they were terminated; all of these acts were offered to contribute to showing the purposes of the trips and to throw light upon the intent of the defendant at the time he helped and persuaded the victim to make both trips.

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## III.

### ERROR IN THE TRIAL COURT'S INSTRUCTIONS AS GIVEN AND ERROR IN REFUSING TO GIVE CERTAIN INSTRUCTIONS REQUESTED BY THE APPELLANT.

The defendant's last claim of error is that the trial Court refused to give several pertinent instructions, and further, gave incorrect instructions. The defendant requested eight instructions but argues only as to his instructions numbers 3 and 8. We will confine our reply to instructions numbers 3 and 8. The defendant complains (p. 26, Brief) that the Court should have instructed the jury to be cautious in considering a

prostitute's testimony. The defendant cites *Hilliard v. United States,* 121 F. 2d 992 (4th Cir. 1941), to support his contention. The *Hilliard* case holds that while a trial Court might do well to give such instructions, it was not error to refuse to do so. In the *Hilliard* case, the trial Court did refuse to so instruct and the Appellate Court did not reverse. This is the situation in the instant case. In *Sandquist v. United States,* 115 F. 2d 510 (10th Cir. 1940), the trial Court did give an instruction similar to the one requested by the defendant. Therefore, the Appellate Court's decision cannot stand as precedent for whether or not failure to give such instruction is error.

The trial Court in the instant case did make reference to the credibility of witnesses in general. He commented on factors that should be taken into consideration by the jury in assessing a witness' reliability.

The defendant's requested instruction number 8 does not correctly state the law. In *Mortensen v. United States,* 322 U.S. 369 (8th Cir. 1944), the Supreme Court said, p. 374:

> "An intention that the women or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement."

The defendant's requested instruction number 8 states in the second paragraph as follows:

> "The intent and purpose necessary to convict the defendant must have been formed by him at or

prior to the time that the defendant is alleged to have procured the tickets . . ."

The defendant's requested instruction does not follow the law as set out in the *Mortensen* case.

The trial Court's instructions in the present case dealing with the intent and purpose of the defendant in persuading, inducing and enticing the victim to make the trip do state the law correctly. The trial Court's instruction number 4 is a complete and adequate statement of the law applied to this particular fact situation.

The defendant's claim (p. 31, Brief) that the trial Court's instructions numbers 5 and 6 are erroneous seems to be inconsistent with his statement on pages 31 and 32 of his brief. The trial Court's instructions were correct.

There is no legal error prejudicial to the defendant in any of them.

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**CONCLUSION.**

As to the defendant's claim of error in Count I of the indictment, it was a matter of form which could not and did not mislead or fail to properly inform the defendant of the charge. The indictment was sufficient. Nor was there any material variance.

There was sufficient evidence from which a jury could properly conclude that the defendant violated the White Slave Traffic Act.

Introduction into evidence of the defendant's illicit sexual conduct with the victim immediately before and just after conclusion of the interstate trip was proper. It went to establishing the fact that the victim did engage in illicit sexual conduct and it threw some light upon the defendant's purpose and intent in transporting her. It corroborated the accusation. The defendant failed to request an instruction limiting the purpose of testimony about such illicit sexual conduct. He could have done so. He cannot complain now.

There were no errors in the trial Court's instructions to the jury. They adequately covered the fact situation with a correct statement of the law.

Dated, Anchorage, Alaska,
January 27, 1959.

Respectfully submitted,

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